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ABSTRACT

This analysis of the Individuals with Disabilities Education Act focuses on Minnesota's participation in Part H, which creates a discretionary program to assist states in planning, implementing, and developing a statewide system of comprehensive, coordinated, multidisciplinary, interagency programs for young (birth to age 3) children and their families. As Minnesota is currently participating in the fourth year of the Part H program, the first section of this monograph briefly explains what happens if Minnesota participates in year 5 of the Part H program. Some legislative concerns are raised about year 5, which will involve creation of an entitlement program for all eligible children and their families. The second section describes Part H program components, including requirements, the needed services, and how they are provided. These include evaluation and assessment, the Individual Family Service Plan, criteria for early intervention services, components of an early intervention system, and interagency coordination. The third section raises some questions about Part H participation. These address the areas of choosing a case manager, defining developmental delay for eligibility purposes, determining eligibility, funding entitlement costs, requiring interagency agreements, imposing stringent personnel standards, and establishing procedural safeguards. (DB)

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HOUSE RESEARCH

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Information Brief

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Part H of the Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) is a federally funded law that requires states to identify, and provide a free appropriate education to, eligible children in order to receive federal funds for special education services. Part H of the act creates a discretionary program to assist states in planning, implementing and developing a statewide system of comprehensive, coordinated, multidisciplinary, interagency programs for disabled children from birth up to age three and their families. Minnesota is currently participating in the fourth year of the Part H program.

Minnesota's Participation in Part H 2
This section briefly explains what happens if Minnesota participates in year five of the Part H program.

Part H Program Components 3
This section describes program requirements: the needed services and how they are provided.

Some Part H Participation Questions 9
This section briefly raises a number of questions about actually implementing year five of Part H.

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Minnesota's Participation in Part H

Year Five of Part H

Minnesota's participation in the fifth and subsequent years of the Part H program will create an entitlement program for all eligible infants and toddlers and their families. As an entitlement program, Part H requires a participating state to provide each eligible child and the child's family with the rights, procedural safeguards, and services that are authorized under the program. A state has some flexibility to define the population of eligible children and their families that it will serve.

School districts, along with local social service agencies that support some aspects of the program, receive a specified amount of federal funding for Part H services. The table on page 3 shows that for the first four years of the program this amount has been about $1.3 million each year. Beginning in year five of the Part H program, a participating state and local units of government must pay the difference between the amount of federal funding they receive and the actual cost of providing Part H services. The table also shows that Minnesota expects to receive about $4 million in federal funds if it participates in year five of Part H.

The state must ensure that all appropriate early intervention services will be available to all eligible infants and toddlers before it begins year five of the Part H program. Once in year five the state obligates itself to provide all rights, protections and early intervention services according to Part H requirements, regardless of the resources available. The state may charge the parents of eligible children sliding fees only for nonentitled services.

Legislative Concerns About Year Five

Unless the legislature intercedes, the education department may apply to participate in year five of the Part H program at any time after April 1, 1994. In Laws 1993, chapter 224, article 3, section 34, the legislature prevented the state Department of Education from applying to the federal government to participate in the fifth or any succeeding fiscal year of the Part H program until specifically authorized by law or until after April 1, 1994, whichever comes first. The 1993 Legislature did this because it was concerned about the potential costs of further participation in Part H. It also directed the state education commissioner to hire an independent consultant to prepare a report for the legislature by January 15, 1994 on the short and long term fiscal impact to the state and local governments of participating in year five.

The state's "year four" status means that through June 30, 1995, to the extent that resources are available, the state must provide at no cost to eligible children or their families certain services and protections, including child and family evaluations and assessments, an individual family service plan that is called an IFSP, a service coordinator or case manager, procedural safeguards, and other early intervention services contained in the IFSP. These and other components of the Part H program are discussed in the following section.

Federal Funding

Minnesota will receive federal funding for its fourth year participation in the Part H program through state fiscal year 1994.

Part H Federal Funding in Minnesota

Fiscal Year	Federal Part H Funds
1991	$1.10 million
1992	1.28 million
1993	1.28 million
1994	1.28 million
1995	3.96 million*

*Estimated

Part H Program Components

Evaluation and Assessment

Under the Part H program, evaluation and assessment are two separate functions. The evaluation is designed to determine a child's initial and continuing eligibility to participate in the program. The assessment is designed to determine child and family needs while the child is eligible for the program; providers then plan and deliver needed services to the child and the family.

The Individual Family Service Plan

Based on a multidisciplinary assessment of an eligible child's needs, a multidisciplinary team that includes the parents develops a written individualized family service plan (IFSP) that identifies services to meet those needs. The plan must:

- be evaluated at least once per year and the family must be given the opportunity to review the plan at least once per six months
- state in writing the child's present level of development and the family's strengths and needs that affect the child's development
- state the outcomes the child and family are expected to achieve, the criteria, procedures and timelines for determining progress in meeting the outcomes, and the modifications of or revisions to the outcomes

- state the specific early intervention services needed to meet the child's unique needs
- state the dates for beginning the services and the duration of the services and
- indicate the steps to be taken to support the child's transition to other services

Complaint Procedures

The program requires two types of complaint procedures: a formal hearing in which an impartial person must hear the case and write a decision; and an administrative complaint procedure. Formal hearing decisions can be appealed to state or federal court.

There are two types of complaints a parent might file:

- complaints about the state's compliance with a law that is applicable to the parent's child
- complaints about the state's failure to develop a statewide system that includes required Part H components

State Plan Required

The federal government requires states participating in Part H to create state plans, subject to federal approval, that meet the federal requirements for a comprehensive, coordinated, multidisciplinary, statewide system of early intervention services for all disabled infants and toddlers and their families. These plans must ensure such things as the availability of appropriate services for all eligible children, require specifically developed personnel standards, implement family-centered services, demonstrate interagency agreements, and coordinate resources for providing the early intervention system.

Criteria for Early Intervention Services

The Part H program does not require new services to be created. Instead, the program assists participating states in reorganizing existing early intervention services into one accessible system. A participating state is expected, however, to develop yet unavailable, needed services and expand inadequate services.

"Early intervention services" must satisfy seven criteria:

Seven Criteria for Early Intervention Services

Services must be ...

1. publicly supervised so that ultimate responsibility for providing the services remains with the designated lead agency;
2. provided to eligible children and their families at no cost except where federal or state law permits families to pay;
3. designed to meet an eligible child's needs for physical development, cognitive development, language and speech development, psycho-social development, and self-help skills;
4. provided by qualified personnel including special educators, speech and language pathologists and audiologists, occupational therapists, physical therapists, psychologists, social workers, nurses, and nutritionists; and

Services must ...

5. meet applicable federal and state standards including providing the early intervention services contained in the approved state plan;
6. include a variety of early intervention services;
7. conform to an IFSP.

The types of services an eligible child may receive under the Part H program include family training, counseling and home visits, special instruction, speech pathology and audiology, occupational therapy, physical therapy, psychological services, case management services, medical services only for the diagnostic or evaluation services, early identification, screening and assessment services, and health services that enable the child to benefit from other services.

Components of an Early Intervention System

There are, at a minimum, 14 components of a statewide early intervention system. The components relate to the services that providers must deliver to eligible children and the assurances that a state must give to the federal government to remain eligible for federal funding. They include:

1. **A definition of "developmentally delayed" that the state must use in implementing the Part H program.** There are three distinct groups of children who come within the definition of developmentally delayed:

   - children who have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay
   - children who are experiencing developmental delays
   - children who are at risk of having substantial developmental delays if early intervention services are not provided.

   Under the Part H program, states have the option of serving at-risk infants and toddlers. A participating state that elects to serve at-risk children must decide on the range of at-risk groups it wishes to serve. Children may be at-risk by virtue of biological or environmental factors. Potential at-risk groups include children ...

   - of parents with disabilities or health problems
   - of substance abuse parents
   - who are abused
   - siblings of abuse victims
   - with seriously disturbed parent/child relationships
   - in highly disruptive families
   - of teenage parents
   - of parents over age 35
   - of low income parents
   - children of parents without high school educations
   - siblings of an identified delayed child
   - infants who are low birth weight or premature
   - of parents lacking parental care
   - with childhood illnesses
   - of parents who lack access to services
   - who lack routine well-baby care
   - children of parents who lack support systems
   - with medical conditions that could result in delay
   - of mothers exposed to medications known to cause developmental risk
   - with inadequate physical environments at home
   - who, at age three, would be identified as developmentally disabled

Any at-risk children a state elects to include in its definition of eligible children are entitled to the same rights, protections and services as other eligible children.

2. **A timetable** the state will use to ensure that all appropriate early intervention services are available to eligible infants and toddlers and their families before the state participates in year five of the Part H program.

3. **A timely, comprehensive, multidisciplinary evaluation** of each eligible infant and toddler and the child's family to determine how service providers can appropriately assist in the child's development.

4. **An individualized family service plan (IFSP)** that includes case management services.

5. **A comprehensive child find system** that includes a system for making referrals to service providers such as hospitals, physicians, other health care providers, public health facilities, and day care facilities.[1]

6. **A public awareness program** that focuses on early identification of eligible infants and toddlers.

7. **A central directory of early intervention services, resources and experts** available in the state and of research and demonstration projects being conducted in the state.

8. **A comprehensive training system**, provided by the state or through a grant, contract or other arrangement, for training public and private service providers, primary referral sources, and others who will provide services after being trained. Primary referral sources include hospitals, physicians, other health care providers, public health facilities and day care facilities.

9. **A lead agency designated by the governor** to administer, supervise and monitor programs and activities, identify and coordinate all available federal, state, local and private resources and assign financial responsibility, resolve state interagency disputes and develop procedures for providing services pending the resolution of interagency disputes, and enter into formal agreements that define the financial responsibility of each agency for paying for early intervention services and establish procedures for resolving disputes. In Minnesota, the state Department of Education is the designated lead agency. Although the Part H program recognizes the importance of interagency responsibility for providing and paying for appropriate services for eligible infants and toddlers, the program places the ultimate responsibility for the services with the lead agency.

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[1] There are 10 elements of a comprehensive child find system: a definition of the tracking population, screening and prescreening, public awareness, referrals, tracking registries, case management, diagnostic assessment, coordination of efforts, financial resources, and trained personnel.

10. **A policy for contracting with local providers** for services such as assessing the eligible infant or toddler and developing an IFSP.

11. **A procedure for procuring timely reimbursement** of Part H funds.

12. **Procedural safeguards** that include a timely[2] resolution of parents' administrative complaints and the right to appeal to state or federal court, confidentiality of personally identifiable information, the opportunity to examine records, written notice in the parents' native language and regular monitoring of services.

13. **Personnel standards** based upon certification, licensing and registration requirements applicable to early intervention service providers that ensure that providers are adequately prepared and trained.

14. **A data collection system** containing data on the numbers of disabled infants and toddlers and their families in need of services and data describing services delivered to the children.

Interagency Coordination

The success of the Part H program depends upon interagency coordination to provide and pay for appropriate early intervention services. To ensure a coordinated approach the state Department of Education, as the designated lead agency, is responsible for entering into formal agreements with other agencies and entities within the state. Under Minnesota Statutes, section 120.17, subdivision 17, the commissioners of the departments of education, health and human services are directed to enter into an agreement to implement the Part H program. The purpose of the agreements is to:

(1) establish the extent of an agency's participation in the early intervention system;

(2) define the agency's financial responsibility for paying for early intervention services; and

(3) establish procedures to resolve disputes about service delivery or costs.

The program also requires that a state interagency coordinating council help the lead agency to identify and coordinate financial resources. Minnesota Statutes, section 120.17, subdivision 11a, establishes a state interagency coordinating council. The council is composed of between 17 and 25 members, appointed by the governor. The council is charged with developing programs of early intervention services for eligible children and their families.

[2] Part H regulations suggest that "timely" means 30 days or less.

Some Part H Participation Questions

A participating state will have to develop policies and regulations to implement year five of the Part H program. The substance of the policies and regulations will have significant impact on eligible children, service providers, parents and other advocates involved in the program, and on the state and local units of government. What follows is a short discussion of a number of questions that may arise as a participating state develops program regulations[3]. The issues raised by these questions may be of concern to the 1994 Legislature as it decides whether or not to enter year five of the Part H program.

Choosing a Case Manager

A participating state and local units of government must provide comprehensive, coordinated, multidisciplinary assistance, including financial and resource services, to eligible children and their families. In order to provide coordinated assistance, case managers are chosen "from the profession most immediately relevant to the child's or family's needs." The purpose of coordinated assistance is to meet children's multiple needs. The choice of the "most relevant" profession may likely depend on who is making the choice. In addition, case managers serve as the "single point of contact" for helping parents. General service providers may find it difficult to perform this function along with their other responsibilities or, because of their nurturing role, multiple service providers may want to be case managers for the same child.

Defining Developmental Delay for Eligibility Purposes

Under the Part H program, a participating state determines children's eligibility to participate in the program by defining "developmental delay" according to levels of functioning. However, the state is required to develop procedures to measure functioning in five federally specified developmental areas: cognitive, physical, language and speech, psychosocial, and self-help. The state must declare as eligible those children who meet the state's criteria for "developmental delay" in at least one of the five federally specified areas.

Determining Eligibility

Infants and toddlers with disabilities who are experiencing developmental delays or have diagnosed physical or mental conditions that likely will result in developmental delays are eligible for the program. While a participating state has considerable discretion in determining the level of delay required for program eligibility, it is discouraged from using a statistical approach in deciding whether children with diagnosed physical or mental conditions likely will experience developmental delay. A participating state must also decide whether to

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[3] Portions of the structure and substance of this part of the publication are from Wesley Brown, Early Intervention Regulation; Annotation and Analysis of Part H (LRP Publications, Horsham, Pennsylvania 1990).

include within the eligible population those infants and toddlers at risk of having substantial developmental delays if early intervention services are not provided. Including at-risk children may be problematic because it is not clear who is at-risk or what the financial cost is of including this group.

Selecting an Evaluator

An evaluation determines initial and continuing eligibility and assessment determines child and family needs throughout the period of eligibility for the purpose of planning and delivering services. Evaluation and assessment must be based on an "informed clinical opinion" by qualified personnel. An "informed clinical opinion" must be considered in tandem with a participating state's formal eligibility requirements. It is unclear who is qualified to assess a family[4] or what standards and procedures should guide an assessment. Overlapping professions may be necessary to assess family needs and deliver coordinated services. Although a case manager is instrumental in delivering coordinated services, it is unlikely that a single profession can deliver all the services required in an IFSP.

Funding Entitlement Costs

States have the discretion to decide whether to participate in the Part H program. However, the time a participating state enters its fifth year of Part H funding, it must provide all eligible infants and toddlers and their families with appropriate services through a statewide early intervention system. In the fifth year, a participating state and local units of government must fund any disparity between the amount of federal funds available for the program and the actual cost of providing the services.

Resolving Financial Issues

Developing a financial plan to pay for early intervention services is key to implementing the Part H program. Federal funding provides only a portion of the total costs a participating state and local units of government likely will incur in providing Part H services to eligible children and their families. To reduce costs, the lead agency must eliminate unnecessary duplication of services and redirect existing resources. If the state's financial resources are inadequate to provide all eligible children with full services, the state must ensure an equitable geographical distribution of existing resources. In year five, however, the state and local units of government are obligated to provide all eligible children and their families with all services contained in the IFSP.

Federal program regulations prohibit participating states from reducing state funding to programs for eligible children in order to fund Part H services. Part H regulations require

[4] A family must consent to an assessment.

participating states to use federal Part H funds only to supplement and increase state and local funds for eligible children. Federal funds may not be used to "supplant" existing state and local funds. Participating states must not reduce medical or other available assistance and not alter eligibility under Maternal and Child Health or Medicaid for disabled infants and toddlers.

Requiring Health Services

The state must provide the health services necessary to enable eligible children to participate in early intervention services. Distinctions between the health and medical and the educational needs of certain eligible children may be ambiguous.

The Comprehensiveness of the Individualized Family Service Plan (IFSP)

The IFSP is a management tool for documenting efforts to provide services to eligible children and their families and comply with applicable laws, including procedural safeguards. The IFSP is developed by qualified personnel, is based on evaluation and assessment, is considered within 45 days of a child's referral, is reviewed at least every six months, and lists other services that Part H does not require. The role of the family in the IFSP is critical: parents must consent to participate in early intervention services because infants and toddlers are not subject to compulsory education requirements.

Requiring Inter-Agency Agreements

To ensure a coordinated, comprehensive, multidisciplinary interagency program of early intervention services, Part H regulations require interagency agreements between the lead agency and each state level agency involved in the state's program. A lead agency must develop a variety of policies and strategies to ensure that all eligible children receive entitled services, including assigning responsibilities to state and local agencies for program and fiscal support. Requiring agencies to commit future actions and resources to a new program at a time when planned and existing programs lack sufficient financial resources may be difficult. Also, agencies may be concerned about their ability to control costs in a program where the required services are based on an entitlement.

Imposing Stringent Personnel Standards

The Part H program anticipates that qualified personnel will provide appropriate services to eligible children. The program treats as qualified only those professionals whose certification or licensure requirements "are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services." If personnel standards are not based on a state's "highest" requirements, then the state must retrain personnel according to established timelines or hire appropriately trained personnel.

Such standards may be difficult for some participating states to implement.

Establishing Procedural Safeguards

The Part H program requires procedural safeguards to resolve individual child complaints about identification, assessment and placement. The procedures include appointing an impartial decision maker to conduct an impartial due process hearing and resolve disputes between parents and public agencies. The decision of the impartial decision maker is binding on the involved agency unless reversed on appeal in state or federal court. A short timeline of between 30 and 45 days for the due process hearing is to accommodate the rapidly changing needs of eligible children. A state may establish a mediation process before implementing formal due process procedures. A participating state must also establish an administrative complaint procedure that permits parents to be advised by counsel and other experts, present evidence and confront witnesses, receive timely notice of evidence to be presented, and obtain a transcript of the proceedings and written findings of fact and decisions. Such safeguards represent a significant financial and administrative investment.

Imposing a Short Timeline

The Part H program imposes a timeline by which all participating states will serve all eligible children. Few statewide systems are sufficiently comprehensive to meet Part H program requirements before the fifth year. Consequently, participating states may encounter programmatic and financial discrepancies between federal requirements and existing state mandates to serve eligible infants and toddlers.

Providing for Transitions into Other Programs

The Part H program only deals with children up to age three. However, it does specify that the IFSP must include appropriate preschool or other services for children reaching age three, and it must also include procedures for training parents and changing the delivery of services as children "age out" of the program. Since Part H requirements affecting families do not automatically carry over into other current programs for children ages three through five, the state will have to develop transition mechanisms to move children from Part H to the next level of its system.

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